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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Department (Board) of Juvenile Justice |
| Virginia Administrative Code (VAC) citation | 6VAC35-101 |
| Regulation title | Regulation Governing Juvenile Secure Detention Centers |
| Action title | Combines in a single document the provisions applicable to juvenile secure detention centers currently contained in 6VAC35-51 and 6VAC35-140. Contains a comprehensive review of these existing provisions to streamline the regulation as applicable to juvenile secure detention centers. |
| Date this document prepared | |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Board of Juvenile Justice (Board) regulates three distinct types of facilities: (1) juvenile correctional centers; (2) juvenile local/regional secure detention centers; and (3) group homes/halfway houses. At present, these facilities are governed by two separate regulations: (1) the Standards for Juvenile Residential Facilities (6VAC35-140) and (2) the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51).

The Department of Juvenile Justice (DJJ) has had several ideations of regulations governing the residential facilities regulated by the Board. Earlier, DJJ had five separate regulations governing secure detention homes, post-dispositional confinement in secure detention, pre- and post-dispositional group homes, and juvenile correctional centers. These regulations applied to the facilities in conjunction with the Standards for the Interdepartmental Regulation of Children's Residential Facilities (the "CORE" regulation), which went into effect in 1981.

The Board promulgated the Standards for Juvenile Residential Facilities (6VAC35-140), which was most recently reviewed and revised in May 2005. The regulation consists of the Board's regulations for all

facilities it regulates. This regulation establishes the minimum standards for residential facilities in the Commonwealth’s juvenile justice system and covers program operations, health care, personnel, facility safety, and physical environment. It contains additional provisions for secure custody facilities, boot camps, work camps, juvenile industries, and independent living programs.

The Standards for the Interim Regulation of Children’s Residential Facilities (6VAC35-51) is a reenactment of the “CORE” regulation, in its entirety, as a Board regulation. This regulation was adopted by the Board in September 2008 in order to comply with the requirements of Chapter 873 of the 2008 Acts of the General Assembly, which mandated the repeal of the “CORE” regulation and action to be taken by the affected Boards by October 31, 2009. This regulation has more expansive provisions than 6VAC35-140 and also contains minimum requirements for the different facilities regulated by the Board.

Throughout the years, problems have been identified in implementing the requirements contained in these two separate regulations due to the distinct nature of the three types of facilities regulated by the Board. Accordingly, the Board approved consolidating the current regulatory requirements for residential programs and separating them into separate regulations governing (1) juvenile correctional centers; (2) juvenile local/regional secure detention centers; and (3) group homes/halfway houses. This revamping of the regulatory scheme will be done in conjunction with a comprehensive review of the current provisions. This review will have the goals of enhancing the clarity of the regulatory requirements and achieving improvements that will be reasonable, prudent, and will not impose an unnecessary burden on the facilities subject to this proposed regulation or the public.

This NOIRA seeks to provide notice to the facilities subject to this proposed regulation and the public regarding the proposed changes affecting juvenile secure detention centers.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 16.1-322.7 of the Code of Virginia requires the Board to “make, adopt and promulgate regulations” governing the operation of local or regional secure detention centers. This mandate requires the regulation of the minimum standards for the administration and operation of the facilities.

The Board is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which states the Board may “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Board serves as the regulatory authority for secure residential facilities, both juvenile correctional centers and local/regional secure detention centers, and the group homes/halfway houses operated by or funded through DJJ. Currently, these facilities are governed by two separate regulations: (1) the

Standards for Juvenile Residential Facilities (6VAC35-140) and (2) the Standards for the Interim Regulation of Children’s Residential Facilities (6VAC35-51), unless specifically exempted.

The current regulatory scheme has several difficulties in application. Each regulation has the full force and effect of law. Unfortunately, some of the provisions are contradictory or conflicting. Additionally, there are numerous exclusions for the different types of facilities from a variety of regulatory provisions. At times it is unclear exactly which facilities are exempted and to which section or subsection such exceptions are applicable.

To address these issues DJJ considered two courses of action: (1) consolidate the two existing regulations into one or (2) separate the two regulations into three regulations; one for each different “type” of facility regulated by the Board.

Due to the distinct characteristics of the types of facilities regulated by the Board and the complexity of applying a single regulation to the appropriate facility, it was concluded that it would be difficult to regulate all such facilities in one single regulation. The Board approved pursuing the second course of action. Thus, DJJ is proposing separate regulations for the three distinct types of facilities: (1) juvenile correctional centers; (2) juvenile local/regional secure detention centers; and (3) group homes/halfway houses.

This NOIRA addresses the proposal to create a separate residential regulation for juvenile secure detention centers.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Department (Board) of Juvenile Justice proposes to conduct a comprehensive review of the regulations and, if appropriate, address any deficiencies found. The regulations will be reviewed and modifications proposed to ensure that it most effectively and efficiently supports its statutory purpose.

The Department (Board) of Juvenile Justice, through its advisory committee, intends to perform a comprehensive review and anticipates the following changes:

- ❖ Develop a comprehensive regulation containing all regulatory provisions applicable to juvenile detention centers that will include the regulatory provisions from 6VAC35-51 and 6VAC35-140 as determined necessary and applicable after a comprehensive review of these regulations;
- ❖ Separate regulatory provisions into similar subject matter areas (general provisions; administrative and personnel; physical environment; safety and security; resident’s rights; program operation; health care services; behavior management; and post-dispositional detention programs);
- ❖ Update the definition section and terms used for clarity and consistency with other regulations promulgated by the Board;
- ❖ Remove unnecessary verbiage and provisions required by other sources (i.e.; personnel requirements of the governing authority);
- ❖ Update provisions regarding participation of residents in human research;
- ❖ Amend the background check section in light of recent statutory changes;

- ❖ Redraft the orientation, initial training, and retraining sections to consolidate and clarify requirements and timeframes;
- ❖ Clarify requirements for volunteers and interns;
- ❖ Update requirements for tuberculosis screening and follow-up (for both staff and residents) after consultation with the Department of Health;
- ❖ Review, update, and streamline requirements by related subject matter;
- ❖ Provide additional guidance regarding searches of residents;
- ❖ Identify and consolidate a comprehensive “resident’s rights” section;
- ❖ Amend case management and recordkeeping requirements to model best practices;
- ❖ Amend the disciplinary procedure to expedite the process and make it more applicable to a detention center environment;
- ❖ Update provisions regarding disciplinary and administrative confinement and isolation; and
- ❖ Incorporate appropriate cross-references to statutes, regulations, and guidance documents amended, enacted, or promulgated since the last review.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Initially, retaining the current regulatory scheme was considered. However, given the difficulty in application with (1) conflicting provisions and (2) confusion regarding exemptions and exceptions, such retention was rejected.

Two alternative courses of action were considered: (1) to consolidate the two existing regulations into one or (2) to separate the two regulations into three regulations, each consolidating the provisions for the three different “types” of facility regulated by the Board. The latter of these courses of action was adopted by the Board. Representatives of each of the “types” of facilities were consulted; and all were in support of this proposal.

Furthermore, given statutory and regulatory changes since 2005, DJJ determined that a comprehensive review and updating of the regulation was essential for ensuring consistency and avoiding ambiguity in interpretation for facilities across the Commonwealth. Thus, in addition to consolidating and separating the current regulations, DJJ, through its advisory committee, will review the applicability and necessity of each provision.

In this NOIRA, DJJ will conduct such a review as applicable to juvenile detention centers.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including, but not limited to: (1) ideas to assist in the development of a proposal, (2) the costs and benefits of the alternatives stated in this background document or other alternatives, and (3) potential impacts of the regulation. The agency is

also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: (1) projected reporting, recordkeeping, and other administrative costs; (2) probable effect of the regulation on affected small businesses; and (3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email, or fax to **Patricia Rollston, Legislative Analyst at Virginia Department of Juvenile Justice, P.O. Box 1110, Richmond, Virginia 23218-1110; by electronic mail at patricia.rollston@djj.virginia.gov; via telephone at (804) 786-4194; or via facsimile at (804) 371-0773.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The proposed regulatory action only applies to local and regional juvenile secure detention centers. The process will begin with an advisory committee of detention center personnel, who are regulated by various provisions of the regulation, and DJJ personnel. Technical advisors will be utilized on an as-needed basis. The advisory committee also will review all comments received through the regulatory process.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will establish a comprehensive set of regulations governing juvenile secure detention centers. Provisions contained therein will result in such requirements being in one regulation (compared with two under the current regulatory scheme). The proposed action will provide a vehicle for protecting individuals who are ordered to these facilities and for promoting clear and concise minimum requirements for these facilities. The regulation is not expected to have a direct impact on families; however, to the extent the regulation improves services provided in such facilities or promotes health and safety in those services, it may have a positive impact on the individuals ordered to these facilities and may, consequently, have an indirect positive effect on that person's family. The regulation is not expected to have any impact on disposable family income.